



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R09-OAR-2015-0673; FRL-9936-69-Region 9

Partial Approval and Disapproval of Nevada Air Plan Revisions,

Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a partial approval and partial disapproval of revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOCs), oxides of sulfur (SO_x), and particulate matter (PM) emissions. We are proposing action on rescissions of local rules that regulate these pollutants under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by [**Insert date 30 days after the date of publication in the Federal Register**].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2015-0673, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit <http://www.epa.gov/dockets/comments.html> for further instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For the full EPA public comment policy and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available

only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972-3073, *Gong.Kevin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. The State's Submittal.

A. Which rules has the county rescinded?

On November 20, 2014, the Nevada Division of Environmental Protection (NDEP) submitted a SIP revision that includes amendments to two local rules adopted by the Clark County Board of County Commissioners ("Clark County") and rescissions of four local Clark County rules.¹ In this action, we are proposing action on the rescissions. The EPA will take action on the rule amendments in a separate rulemaking.

Table 1 lists the rule rescissions that the EPA herein proposes to approve, with the date the rule was first locally effective and the EPA's date and citation of approval.

Table 1 - Submitted Rule Rescissions Proposed for Approval

| Rule Section of the Clark County Air Quality Regulations (CCAQR) | Title | Local Effective Date | SIP Approval Date | FR Citation |
|---|-----------------------------|-----------------------------|--------------------------|--------------------|
| Section 29 | Sulfur Contents of Fuel Oil | December 29, 1978 | August 27, 1981 | 46 FR 43141 |
| Section 30, subsections 30.1-30.7 (excluding subsection | Incinerators | December 29, 1978 | August 27, 1981 | 46 FR 43141 |

¹ Under state law, NDEP is the Governor's designee for maintaining the Nevada SIP. NDEP is also the agency responsible for air quality planning and permitting within the entire state except for Clark County and Washoe County. In Clark County, air quality planning and permitting jurisdiction, with certain exceptions, lies with the Clark County Board of County Commissioners, which acts through the county's Department of Air Quality (DAQ).

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|--------------------------------|---|----------------------|------------------|-------------|
| 30.4) | | | | |
| Section 30, subsection 30.4 | [exemptions for certain types of incinerators] | September 3, 1981 | June 18, 1982 | 47 FR 26386 |
| Section 30, subsection 30.8 | [related to maximum allowable emission rates] | September 3, 1981 | June 18, 1982 | 47 FR 26386 |

Table 2 lists the rule rescissions that the EPA herein proposes disapprove, with the date the rule was first locally effective and the EPA's date and citation of approval.

Table 2 - Submitted Rule Rescissions Proposed for Disapproval

| Rule Section of the CCAQR | Title | Local Effective Date | SIP Approval Date | FR Citation |
|--|---|-------------------------------------|----------------------------------|--------------------|
| Section 52, subsections 52.1-52.10 (excluding subsections 52.4.2.3 and 52.7.2) | Handling of Gasoline at Service Stations, Airports and Storage Tanks | December 28, 1978 | April 14, 1981 | 46 FR 21758 |
| Section 52, subsections 52.4.2.3 and 52.7.2 | [related to vapor recovery and sales information] | September 3, 1981 | June 18, 1982 | 47 FR 26386 |
| Section 60 (excluding subsections 60.4.2-60.4.3) | Evaporation and Leakage | June 28, 1979 | April 14, 1981 | 46 FR 21758 |
| Section 60, subsection 60.4.2 | [General prohibition on the use of cutback asphalt] | September 3, 1981 | March 20, 1984 | 49 FR 10259 |
| Section 60 , | [Exceptions to | September | June 18, | 47 FR 26386 |

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|----------------------|-----------------------|---------|------|--|
| subsection 60.4.3 | subsection 60.4.2] | 3, 1981 | 1982 | |
|----------------------|-----------------------|---------|------|--|

On May 20, 2015, the submittal for Clark County was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

This rule rescissions include four sections of the Clark County portion of the Nevada SIP, Sections 29, 30, 52, and 60. Previously, NDEP submitted, and the EPA approved into the SIP, various subsections of these rules separately. As a result, the SIP elements concerning each of these Clark County Air Quality Regulations (CCAQR) rules consist of several subsections as identified in Tables 1 and 2.² These sections were repealed locally on April 5, 2011.³

C. What is the purpose of the SIP-approved rules?

Clark County adopted a number of rules to meet CAA national ambient air quality standard (NAAQS) nonattainment requirements

² Unless otherwise specified, all references to CCAQR Sections in this document are to those sections in their entirety.

³ The SIP approved versions of CCAQR sections 29, 30, 52, and 60 rules were all approved into the SIP prior to 1985. The County has since updated the locally effective rules several times. Clark County's most recently adopted local rules differed substantially from the SIP-approved versions. The most recently adopted local versions were the subject of the county's local repeal action. However, we understand that the intent of the county and NDEP in submitting the repeal of these later-adopted (not SIP-approved) versions of the rules is to remove the SIP-approved versions of the rules from the Clark County portion of the Nevada SIP.

in the late 1970s and 1980s, and submitted many of these for incorporation into the Nevada SIP. The rules that were approved into the SIP included CCAQR Sections 29, 30, 52, and 60.

Sections 29, 30, 52, and 60 establish limits and control measures to reduce emissions of SO_x, PM, and VOCs from the combustion of fuels (Section 29), incinerators (Section 30), gasoline dispensing facilities (Section 52) and other processes and industries that use solvents, degreasing, surface coating, and cutback asphalt (Section 60).

Clark County began a process to revise the CCAQR in May 2005. In part, Clark County was concerned with regulatory conflict resulting from the delegation of authority or the local incorporation by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for many source categories covered under existing local rules. As a result, Clark County repealed Sections 29, 30, 52, and 60 on April 5, 2011.

The EPA's technical support document (TSD) associated with today's proposal has more information about these rules.

II. EPA's Evaluation and Action.

A. How is the EPA evaluating the request for rescission?

Once a rule has been approved as part of a SIP, the

rescission of that rule from the SIP constitutes a SIP revision. To approve such a revision, the EPA must determine whether the revision meets relevant CAA criteria for stringency, if any, and complies with restrictions on relaxation of SIP measures under CAA section 110(1), and the General Savings Clause in CAA section 193 for SIP-approved control requirements in effect before November 15, 1990.

Stringency: Generally, rules must be protective of the NAAQS, and must require Reasonably Available Control Technology (RACT) in nonattainment areas for ozone and Reasonably Available Control Methods (RACM), including RACT, for PM nonattainment areas. Clark County is currently designated as a maintenance area for the revoked 1997 ozone standard, and as attainment for the 2008 ozone standard. (40 CFR 81.329). Clark County regulates a PM₁₀ maintenance area for the 1987 standard and is currently designated as attainment for the 2010 SO₂ standard. (40 CFR 81.329). Therefore, these rules are not currently subject to CAA RACT, RACM, or analogous stringency standards.

Plan Revisions: States must demonstrate that SIP revisions would not interfere with attainment, reasonable further progress or any other applicable requirement of the CAA under the provisions of CAA section 110(1). We note that, despite its

current ozone NAAQS attainment designations, air quality monitoring data from 2012-2014 suggest that ozone concentrations within Clark County no longer meet the 2008 ozone standard, so SIP changes that would allow an increase in ozone precursor emissions (such VOC emissions) may not be protective of the NAAQS.

Section 29 limited the sulfur content of fuel oils in order to reduce SO_x emissions, a precursor for PM. Section 30 regulated the operation of incinerators, and limited the emissions of PM. Section 52 regulated the operation of gasoline dispensing facilities, and limited the emissions of VOCs. Section 60 regulated the use, storage, and disposal of solvents in large scale degreasing and coating operations, and for cutback asphalt. Therefore, consistent with CAA section 110(l) requirements, Clark County must demonstrate that the rescission of Sections 29, 30, 52 and 60 would not interfere with attainment and reasonable further progress of the NAAQS or any other applicable CAA requirement.

General Savings Clause: CAA section 193 prohibits the modification of any rule adopted before November 15, 1990 in areas designated as nonattainment for an air pollutant unless the modification insures equivalent or greater emission

reductions of the relevant pollutant.

Guidance and policy documents that we use to evaluate these requirements include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.

B. Do the rule rescissions meet the evaluation criteria?

We have concluded that CCAQR Sections 29 and 30 are appropriate for rescission. Clark County is currently designated as attainment or maintenance for each of the NAAQS. As a result, Clark County rules are not required to meet RACT or analogous

standards, and are subject to the general savings clause in CAA section 193. Clark County also documented that these two rescissions should not increase emissions of ozone precursors, and that any additional emissions would not interfere with the maintenance of applicable NAAQS for SO₂ and PM. This satisfies the requirements on plan revisions.

However, CCAQR Sections 52 and 60 are not appropriate for rescission as summarized below and described in more detail in our TSD.

C. What are the deficiencies?

Clark County has not demonstrated that rescinding CCAQR Sections 52 and 60 would satisfy the requirements of CAA section 110(1). Specifically, we propose to disapprove the rescissions of sections 52 and 60 based on the following concerns:

1. The rescission of Section 52 from the SIP would allow an increase in VOC emissions, as any other applicable Federal or State rules or standards would not apply to the same breadth of sources as the SIP-approved rule. This would constitute a relaxation of the SIP and would not be protective of the 2008 ozone NAAQS.
2. The rescission of Section 60 would allow an increase in VOC emissions. Subsection 60.4 prohibits the use of cutback

asphalt in summer months, with certain exceptions, which is not prohibited by any other Federal or State rules that would apply absent subsection 60.4. Removing this prohibition would constitute a relaxation of the SIP and would not be protective of the 2008 ozone NAAQS.

D. Federal and local enforcement of rules.

While Clark County is no longer enforcing these rules, Clark County Sections 52 and 60 would remain federally enforceable as part of the applicable SIP if the EPA were to finalize today's proposed disapproval of the rescissions of these two rules.

E. Proposed action and public comment.

As authorized in section 110(k)(3) of the Act, we are proposing a partial approval and partial disapproval of the Clark County rule rescissions submitted by NDEP on November 20, 2014. We are proposing to approve the rescissions of CCAQR Sections 29 and 30 and to disapprove the rescissions of Sections 52 and 60. Final approval of the rescissions of Clark County Sections 29 and 30 would remove the rules from the Nevada SIP. Final disapproval of the rescissions of Clark County Sections 52 and 60 would retain both rules in the Nevada SIP.

Neither sanctions nor a Federal Implementation Plan (FIP)

would be imposed should the EPA finalize this disapproval. Sanctions would not be imposed under CAA section 179(b) because the SIP submittal that we are partially disapproving is not a required SIP submittal. Similarly, EPA would not promulgate a FIP in this instance under CAA section 110(c)(1) because the partial disapproval of the SIP revision retains existing SIP rules and does not reveal a deficiency in the SIP for the area that a FIP must correct.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews.

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed partial SIP approval and partial SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply approves and

disapproves the removal of certain State requirements from the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

This rule does not impose any requirements or create impacts on small entities. This proposed SIP approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply approves and disapproves the removal of certain State requirements from the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal

governments or the private sector." The EPA has determined that the proposed approval and disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve and disapprove the removal of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves and disapproves the removal of certain State requirements from the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP revisions that the EPA is proposing to approve and disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885,

April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP revision under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply approves and disapproves the removal of certain State requirements from the SIP.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: October 19, 2015.

Jared Blumenfeld,

Regional Administrator,
Region IX.

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